

**MAR 21 2006**

Tape and Toto v. Gonzales, Nos.03-70097 and 03-73273

THOMAS, Circuit Judge, concurring in part and dissenting in part.

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

I agree that the Board of Immigration Appeals properly denied the motion to reopen and that the petitioners have not yet exhausted their administrative remedies before the agency as to their health problems.

However, I would grant the petition for review as to the denial of asylum. For an adverse credibility finding to withstand this court's review, the immigration judge must articulate specific, cogent reasons to support the finding. *Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002). None of the three reasons offered by the immigration judge for the finding that Tapé's testimony regarding his 1992 arrest (lack of detail, implausibility and failure to provide substantiating evidence) meet this standard. The IJ did not point to any specific instances where Tapé's testimony lacked detail. The IJ's rejection of Tapé's testimony as implausible was based on sheer speculation and conjecture which cannot support an adverse credibility finding. *Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000). Finally, an asylum petitioner's claims do not require substantiating evidence beyond his credible testimony. *Garrovillas v. INS*, 156 F.3d 1010, 1016-17 (9th Cir. 1998).

For these reasons, I would grant the petition for review and remand for further proceedings before the BIA.